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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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02/27/2002

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

7

DATE MAILED: 02/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/30/99

Applicant(s)

Boye

Examiner

John Guarriello

Group Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 11/29/2001
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 9-30 is/are pending in the application.
- Of the above claim(s) 18-30 is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 9-17 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1771

DETAILED ACTION

15. The Examiner acknowledges paper # 6 with the extension of time, and the amendment of 11/29/2001, cancelling the original claims, 1-8, and submitting new claims 9-30.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

National Stage *Election/Restriction*

17. Newly submitted claims 18-30 are directed to an invention that lacks unity with the invention originally claimed for the following reasons: the aspect of the means for circulation is not required for the claimed invention which encompassess claims 9-17, since this special techical feature, circulation means, is lacking in claims 9-17, thus, lack of unity is present.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original

Art Unit: 1771

presentation for prosecution on the merits. Accordingly, claims 18-30 are withdrawn from consideration as being directed to a nonelected invention.

See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein et al. 2,657,396.

Klein describes an improved coverall (like a composite three dimensional textile material), (column 1, lines 5-8). Klein describes an outer air impermeable coverall layer (like the hydrophobic layer), and an inner liner layer (like the hydrophilic layer) of fine sieve like mesh cloth layer, and a

Art Unit: 1771

plurality of cords spaced apart on and sewn (like the link threads interconnecting the hydrophobic layer with the hydrophilic layer) at intervals to the inner liner, (column 1, lines 23-26). Klein describes the essential limitations of the claimed invention. Claims lack novelty.

Claim Rejections - 35 USC § 103

19. Claims 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehse 5,774,902.

Gehse describes a multi-layered woven fabric with an outer protective layer, impermeable to liquids and other stated materials (like the claimed hydrophobic woven layer), (column 3, lines 30-40). Gehse describes an inner layer (like the claimed hydrophilic woven layer) which is moisture permeable to water vapor, (column 3, lines 42-54). Gehse describes a spacer layer which is between the hydrophobic outer layer and the inner layer hydrophilic layer, (column 3, lines 56-64). Gehse describes the joining of the layers of the multi-layerer woven fabric by an interconnection, (column 3, lines 59-60). Gehse describes the layers may be attached by a touch and close fastener or

Art Unit: 1771

attachment which could be yarns interlinked by stitching threads. Gehse differs from the claimed invention because it is silent about coating the hydrophobic layer and some of the other layers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the hydrophobic layer and add other layers as needed motivated with the expectation that in order to insure better heat deflection, cold or ballistic protection that this would be a routine optimization for one of ordinary skill dependent upon the utility, (column 3 lines 34-42; column 5, lines 49-57).

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hartmanns et al. 5,399,418 describes multi-ply three-dimensional bonded textile fabric as a protective garment which is woven and joined by threads, (see abstract; column 3, lines 5-60).

21. Applicant's arguments were considered but are not considered persuasive with the new grounds of rejection regarding the application of Klein to claims 9 and 10, and the new grounds of rejection regarding Gehse.

Art Unit: 1771

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1771

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



John J. Guarriello:gj

Patent Examiner

February 8, 2002

February 20, 2002



ELIZABETH M. COLE
PRIMARY EXAMINER